



**The State of New Hampshire
Insurance Department**


21 South Fruit Street, Suite 14
Concord, NH 03301

Roger A. Sevigny
Commissioner

Alexander K. Feldvebel
Deputy Commissioner

BULLETIN

Docket Number INS NO. 06-040-AB

TO: All Property and Casualty Carriers Authorized to Conduct Business in New Hampshire
FROM: Roger A. Sevigny 
DATE: October 4, 2006
RE: Debt Cancellation/Suspension Contracts, RSA 415-C

There have been many questions regarding the provisions of RSA 415-C that became law on January 1, 2005. Specifically, there is confusion concerning the meaning of the term "debt cancellation or debt suspension contracts" found in RSA 415-C:1, III(b)(3). This Bulletin will clarify what contracts fall within the meaning of "debt cancellation or debt suspension contracts" under Chapter 415-C.

The issue of what is a debt cancellation/suspension agreement has arisen in the banking industry. Passage of the Gramm-Leach-Bliley Act affirmed the position of the Comptroller of the Currency, developed through rulings and regulations, that a national bank has the authority to contract with borrowers to provide debt cancellation/suspension coverage. Federal banking regulations define a debt cancellation contract as "a loan term or contractual arrangement modifying loan terms under which a bank agrees to cancel all or part of a customer's obligation to repay an extension of credit from that bank upon the occurrence of a specified event." 12 C.F.R. § 37.2 (f). A similar definition is given for debt suspension agreements. 12 C.F.R. § 37.2 (g).

Based on these definitions, debt cancellation/suspension contracts are agreements between two parties, the lender (who is owed the debt) and the borrower (who owes the debt). Unlike credit insurance or other insurance arrangements, no payment is made on behalf of the borrower when a covered event triggers a debt cancellation/suspension benefit. Instead, the lender agrees to cancel or suspend the debt. A debt cancellation/suspension agreement does not impose any insurance risk upon the lender. The risk is a business risk rather than an insurance risk and it is inherent in the loan agreement that the lender has already accepted and undertaken the risk that the borrower will not pay the debt.

It is the department's position that these characteristics will distinguish a debt cancellation/suspension product regulated under Chapter 415-C from an insurance product that does not fall within the purview of Chapter 415-C. The department will apply the principals found in the definitions of debt cancellation and debt suspension contracts at 12 C.F.R. §37 when determining whether or not a product is a debt cancellation/suspension product regulated under 415-C.

Therefore, an agreement is not a debt cancellation/suspension agreement if an entity that is not the lender agrees to pay a benefit, either to the lender or the borrower, upon the occurrence of an event (e.g. the total loss settlement of a motor vehicle). The entity in this case is assuming a risk that it did not have prior to its contract with the lender or borrower. The entity is not canceling or suspending a debt, only the lender can do so. Because (1) the entity is paying a benefit upon the occurrence of an event and (2) the entity is assuming a risk that is an insurance risk, the contract between the entity and the borrower is an insurance contract and not a debt cancellation/suspension agreement. These "third party" agreements do not fall within the definition of debt cancellation/suspension and are not regulated as a debt cancellation/suspension product under 415-C.

When a lender issues a debt cancellation/suspension agreement that meets the criteria outlined in this Bulletin (and if the lender is not already regulated under 12 CFR 37 or state banking law) the lender must register as an obligor under RSA 415-C. Entities offering contracts that do not meet the criteria outline in this Bulletin must comply with all insurance laws related to the product offered.

Please contact Chiara Dolcino, Legal Counsel, chiara.dolcino@ins.nh.gov, with any questions about this Bulletin.